

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

Kevin Brathwaite,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 04-1542-GMS
)	
Marcello Rispoli et al.,)	
)	Trial by Jury Demanded
)	
Defendants.)	

DEFENDANTS' MOTION FOR PROTECTIVE ORDER

COME NOW, Sgt. Robert Wallace, Sgt. Stephanie Carpenter, Lt. Matt Stevenson, Capt. Marcello Rispoli and Operation Support Specialist Violet Dunn ("Defendants") by the undersigned, and hereby move this Honorable Court for a protective order pursuant to Federal Rule of Civil Procedure 26 (c). In support of this motion, Defendants offer the following:

1. Kevin Braithwaite ("Plaintiff") is an inmate in the custody of the Department of Correction ("DOC") presently incarcerated at the Delaware Correctional Center ("DCC") in Smyrna, Delaware.

2. On or about January 24, 2007, the Plaintiff filed the following two motions; a Motion for Discovery (D.I. 90) which appears to be a *Request for Production of Documents*, and a Motion for Depositions. (D.I. 91). In the latter motion, the Plaintiff seeks to depose 8 non-party individuals. Subpoenas may only be served on non-parties. FED. R. CIV. P. 45(b)(1). Plaintiff claims that all 8 individuals are employed by the DOC and are assigned to the DCC. The Plaintiff does not explain however, the roles of these 8 individuals or their relation to the incident in question.

3. Federal Rule of Civil Procedure 26(b)(2)(i) places limits on “discovery sought [that] is obtainable from some other source that is more convenient.” The Rule goes on to provide that when “the burden or expense of proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties’ resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues,” the Court may further limit discovery requests. FED. R. CIV. P. 26(b)(2)(iii).

4. Defendants will respond to any written requests for admission or written interrogatories submitted by the Plaintiff during the discovery period per the scheduling order issued by the Court on August 31, 2006. (D.I. 80). Given the Plaintiff’s *in forma pauperis* status, it is clear that he would not be able to hire a court reporter for the depositions of the 8 non-party individuals he wishes to depose.

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE**

/s/ Ophelia M. Waters
Ophelia M. Waters, ID#3879
Deputy Attorney General
Department of Justice
Carvel State Office Building
820 North French Street, 6th fl.
Wilmington, DE 19801
(302) 577-8400
Ophelia.Waters@state.de.us

Dated: February 5, 2007

CERTIFICATE OF SERVICE AND MAILING

I hereby certify that on February 5, 2007, I electronically filed *State Defendants' Motion for Protective Order* with the Clerk of Court using CM/ECF. I hereby certify that on February 5, 2007, I have mailed by United States Postal Service, the document to the following non-registered participant: Kevin C. Brathwaite; SBI #315294; Delaware Correctional Center; 1181 Paddock Road; Smyrna, DE 19977.

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE**

/s/ Ophelia M. Waters
Ophelia M. Waters, I.D. #3879
Deputy Attorney General
820 North French Street, 6th Floor
Wilmington, Delaware 19801
(302)577-8400
ophelia.waters@state.de.us